

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 104 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DHIRUBHAI ARJANBHAI BHARWAD

Versus

STATE OF GUJARAT

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Appearance:

MR SAURIN A SHAH for Petitioner

Mr MR ANAND, P.P. with Mr. N. D. Gohil, A.P.P. for  
Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 20/02/97

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.M.R.Anand,  
learned P.P. with Mr. N. D. Gohil, learned A.P.P. for the  
respondents.

2. Heard. The respondent No.2 herein issued show  
cause notice dated 15.11.1996 to the petitioner for  
showing the cause as to why he should not be externed

from certain areas/districts. Upon having received the notice the petitioner approached this Court by way of Special Criminal Application No.1593 of 1996 which came to be disposed of by order dated 20.11.1996 (Coram : A.R.Dave, J.) directing the petitioner to remain present on 25.11.1996 before respondent No.2 on which respondent No.2 should consider the reply which might have been given by the petitioner and should pass appropriate order in accordance with law. It was further directed that if any order had been passed by the respondent No.2 under the provision of the Bombay Police Act, such order should be treated as cancelled and the appropriate order should be passed only after considering the reply that might be given by the petitioner on 25.11.1996. With such direction the petition came to be disposed of. Petitioner submitted a reply dated 25.11.1996 and on the same day the respondent No.2 passed impugned order of externment against the petitioner, who had taken the matter before the Appellate Authority. The Appellate Authority stayed the operation of the impugned order of externment till 6.1.1997 and kept the matter for hearing of the Appeal on that date. On 6.1.1997 the Appeal was finally heard and the Appellate Authority continued the stay till the final orders. On 9.1.1997 the Appellate Authority, being respondent No.1, set aside the impugned order of externment, but passed further order remanding the matter to the Externment Authority for fresh consideration. It is this order which has been subjected to challenge in this petition under Article 226 of the Constitution of India.

3. Mr.Saurin A. Shah, learned Advocate for the petitioner has pressed into service the Bench decision of this Court in the case of Ashokbhai Zinabhai Rana V/s. State of Gujarat, reported in 1987 (1) G.L.H. 293, where this Court had an occasion to consider the question as to whether the Appellate Authority had any power of remand under the provision of Section 60 of the Bombay Police Act, 1951. After considering the provision this Court held that the order that the Appellate Authority could pass might amount to "vary" to certain extent the order passed by the externment authority, but at the same time it may also include 'setting aside' a 'portion of the order' passed by the externment authority. The Bench further ruled that whatever it might be, unless there was a specific power 'to remand', the powers envisaged by Section 60(3) of the Bombay Police Act could not include the power to remand. Following observations appearing in Para : 5 deserve to be reproduced here :

5. The Bombay Police Act vests certain

powers with the administrative wing of the Executive of the Government. In that sphere, the Act is being administered by the specific authority mentioned in the said Act. While administering this Act, which is in the nature of preventive action, whereby the liberty of the person is curtailed by a validly enacted piece of legislation, such as Bombay Police Act, 1951, the powers vested with the authorities concerned have to be strictly construed and we can not infer certain power which is not specifically vested with the authority concerned. In view of our interpretation of the words "vary" and "set aside" occurring in Section 60(3), we are of the view that the 'power of remand' cannot either be inferred or said to be conferred by the provisions of Section 60(3), on appellate authority. If that be so, 'the order of remand' with a direction mentioned in such orders made by the appellate authority under Section 60 of the Bombay Police Act cannot be sustained."

4. At the out-set it was sought to be submitted that there might be an amendment in the relevant provision conferring Appeal powers. Reference in this connection at the relevant point of time was made to the Maharashtra Amendment which indicates amendment made by the Bombay Police (Amendment and Validation) Act, 1995, so as to introduce the words 'or remand the case for disposal with such direction as it or he thinks fit and make its or his order' in place of the word 'and make its order'. However, Mr.N.D.Gohil, learned A.P.P. after verifying from the Home Department of the Government submitted that there is no such amendment in so far as Gujarat is concerned.

5. In the above view of the matter the portion of the impugned order of the Appellate Authority by which the matter has been remanded with a direction is hereby set aside. Rule made absolute accordingly.

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